



BOARD OF EQUALIZATION

PROPERTY TAX COMMITTEE MEETING MINUTESHONORABLE KATHLEEN CONNELL, COMMITTEE CHAIR
450 N STREET, SACRAMENTO

JULY 25, 2000, 1:30 P.M.

ACTION ITEMS & STATUS REPORT ITEMS**Agenda Item No: 1****Title:** Proposed Rule 180, Assessors' Contracts for Appraisal Work**Issue/Topic:**

Based on the data collection results and the Board's directives, should the Board continue with the rulemaking process on proposed Rule 180, "*Regulation of Contracts for Appraisal Work*"?

Committee Discussion:

Staff described their recommendation to:

1. Postpone the rulemaking process pending adoption of the Board-sponsored legislation amending section 674.
2. While pursuing the Board-sponsored legislation, issue a Letter To Assessors which:
 - (a) Evaluates the data collected from the counties' responses to confidentiality issues under such contracts.
 - (b) Explains the data collected from the counties' responses to bidding procedures and fee issues under such contracts.
 - (c) Makes recommendations by way of follow-up (suggesting model contract provisions regarding confidentiality).
 - (d) Informs assessors of the pending Board-sponsored legislation amending section 674.

Staff discussed the analysis of questions raised by the Board at their March 16, 2000 meeting.

Staff advised the Committee of the status of the Board-sponsored legislation (attached) amending Revenue and Taxation Code section 674. The legislation, which will be amended into Senate Bill 2170 (Senate Revenue and Taxation Committee), is pending in the Assembly Appropriations Committee. Both the California Assessors' Association (CAA) and industry representatives indicated their support for the legislation.

The CAA and industry representatives from the Construction Materials Association of California spoke in support of staff's recommendation to postpone the rule pending the outcome of proposed legislation. In addition, the CAA stated their objection to subsection (g) of the original industry proposal.

Board Member Klehs asked staff to obtain and analyze appraisal contracts involving the sand and gravel industry for the counties of Sacramento, Yolo, Fresno, and Stanislaus. Mr. Klehs specifically requested staff to review these contracts to determine if they contain any language that may seem to be an incentive to lead an appraisal consultant to over-assess property.

A representative from the San Ramon Valley Protection District spoke in opposition of the Board proceeding with the rulemaking process and requested that his June 26, 2000 letter and the July 14, 2000 response (attached) be made part of the record.

Committee Action/Recommendation/Direction:

The Committee voted to recommend that the Board postpone the rulemaking process pending adoption of the legislation amending section 674 and issue a Letter To Assessors describing the data collection results, recommending model contracts, and discussing the pending legislation.

Approved: /s/ Marcy Jo Mandel for
Kathleen Connell, Committee Chair

/s/ Richard C. Johnson for
James E. Speed, Executive Director

BOARD APPROVED

At the July 26, 2000 Board Meeting

/s/ Judy Newton
Judy Newton, Chief
Board Proceeding Division

AMEND SECTION 674 OF THE REVENUE AND TAXATION CODE TO SAFEGUARD CONFIDENTIAL TAXPAYER INFORMATION WHEN CONSULTANTS ARE HIRED BY COUNTY ASSESSORS TO PERFORM APPRAISAL WORK.

SOURCE: HONORABLE JOHAN KLEHS

Some assessors hire appraisal consultants for specialized properties such as oil and gas properties and mining properties. Currently, however, there is no statute that specifically regulates those consultants who obtain otherwise confidential information from property owners in the process of performing their contract appraisal work for an assessor.

Revenue and Taxation Code Section 408 contains the general confidentiality rule for county assessors, and provides that any information and records in the assessor's office that are not required by law to be kept or prepared by the assessor, and homeowners' exemption claims, are not open to public inspection. Section 408 and certain other statutes provide exceptions to this general rule of confidentiality. The assessor is required to keep only a limited number of records, such as the roll and the list of transfers. In addition, Sections 451 and 481 provide that all information requested by the assessor or furnished in the property statement and change in ownership information shall be "held secret" by the assessor. Neither Section 408, Section 451 nor Section 481 have a penalty associated with its violation.

The Construction Materials Association of California (CMAC) recently requested that the Board adopt a regulation specifying the minimum requirements of a contract between an assessor and any outside consultants. One issue raised in the request for a regulation was the protection of confidential taxpayer information where contractors are used. As a result of these discussion, the Board agreed to sponsor legislation to ensure the protection of taxpayer information by specifically extending the confidentiality provisions of Section 408, 451 and 481 as well as provide for the return of taxpayer records once the contract has ended. At the time the Board adopted this proposal, both the CMAC and the California Assessors' Association requested modifications to the proposal. Staff met with both parties and reached agreement from both Associations on the specific language contained herein.

This proposal would (1) make any person who performs appraisal work pursuant to a contract with an assessor subject to the confidentiality provisions of Sections 408, 451, and 481, (2) require that all such contracts specifically incorporate these confidentiality requirements using language that would be prescribed by the Board, (3) require that taxpayer records be returned to the assessor after the contract has ended, (4) clarify that requests for information from taxpayers must

have the specific authority of the assessor, and (5) make the failure to maintain assessee confidentiality a misdemeanor.

The provisions which make it unlawful for a consultant to disclose assessee confidential information and the prohibition on the retention of records after a contract has expired is based on language contained in similar laws with respect to taxpayer confidentiality for the various tax and fee programs administered by the Board: Sections 7153 and 7056 (Sales & Use Tax), Section 9255 (Fuel Tax), Section 30455 (Cigarette Tax), Section 32455 (Alcoholic Beverage), Section 43651 (Solid Waste), Section 45982 (Solid Waste), Section 55381 (Fee Collections), and Section 60609 (Diesel Fuel).

Section 674 of the Revenue and Taxation Code is amended to read:

(a) All contracts for the performance of appraisal work for assessors by any individual person who is not an employee of the state, any county, or any city shall be entered into only after at least two competitive bids and shall be entered into either on a fixed fee basis or on the basis of an hourly rate with a maximum dollar amount.

(b) In addition to any provision in the Real Estate Appraisers' Licensing and Certification Law (Part 3 of Division 4 of the Business and Professions Code), a contractor shall maintain the confidentiality of assessee information and records as provided in Sections 408, 451, and 481 that is obtained in performance of the contract.

(1) A request for information and records from an assessee shall be made by the assessor. The assessor may authorize a contractor to request additional information or records, if needed. However, a contractor shall not request such information or records without the written authorization of the assessor.

(2) A contractor shall not provide appraisal data in his or her possession to the assessor or a contractor of another county who is not a party to the contract. An assessor may provide such data to the assessor of another county as provided in subdivision (b) of Section 408.

(c) It is unlawful for any contractor to retain information contained in, or derived from, an assessee's confidential information and records after the conclusion, termination, or nonrenewal of the contract. Within 90 days of the conclusion, termination, or nonrenewal of the contract, the contractor shall:

(1) Purge and return to the assessor any assessee records, whether originals, copies, or electronically stored, provided by the assessor or otherwise obtained from the assessee.

(2) Provide a written declaration under the penalty of perjury to the assessor that the contractor has complied with the provisions of this subdivision.

(d) All contracts entered into pursuant to subdivision (a) shall include a provision incorporating the requirements of subdivision (b) and (c). This provision of the contract shall use language that is prescribed by the Board of Equalization.

(e) In addition to any provision in the Real Estate Appraisers' Licensing and Certification Law, any violation of subdivision (b) or (c) by a contractor is a misdemeanor and is punishable by a fine not exceeding five thousand dollars (\$5,000), by imprisonment not exceeding one year, or by both, in the discretion of the court.

(f) For purposes of this section, a "contractor" means any person who is not an employee of the state, any county, or any city who performs appraisal work pursuant to a contract with an assessor.

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State Controller, Sacramento

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Executive Director

July 14, 2000

Mr. William D. Ross, District Counsel
Professional Law Corporation
520 South Grand Avenue, Ste. 300
Los Angeles, CA 90071-2610

Re: Proposed State Board of Equalization Rule 180 – Comments and Request for Legal Opinions

Dear Mr. Ross:

This is in response to your June 26, 2000 letter, on behalf of your client, the San Ramon Valley Protection District, to the Honorable Kathleen Connell, in which, you advocate the Board's rejection of proposed Rule 180, and pursuant to the Public Records Act (Government Code Sections 6250 et seq.), you request any opinions of the Board's legal counsel on proposed Rule 180 following the Board's March 16, 2000 meeting.

As we discussed by telephone on July 12, 2000, the issue of whether the Board will proceed with the rulemaking process, postpone the process, or terminate the process entirely, is scheduled as an agenda item at the meeting of the Board's Property Tax Committee at 1:30 p.m., on July 25, 2000. All comments on the substantive issues in proposed Rule 180 will be considered, when and if the Board decides to continue the rulemaking process.

With regard to your Public Records Act request, you have agreed to waive the 10-day response period (per our discussion on July 12). You further broadened your request to include all documents, proposed legislation, as well as legal opinions, that address questions directed to staff by the Board Members, (and in particular by Board Member Johann Klehs), during or after the Board's March 16 meeting. In response to your request, the following items are enclosed:

- (1) 4/4/00, BOE Legislative Committee Agenda with attached Legislative Proposal No. 1-7 (Klehs);
- (2) 4/5/00, Fax opinion to Honorable Jim Maples with legislative history of Section 674 concerning fees for contract appraisal work;
- (3) 5/5 /00, Letter to County Assessors Only, No. 2000/006, with attached "Questionnaire regarding Consultants Performing Appraisal Work for County Assessors;"

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- (4) 6/14/00, Final version of Legislative Proposal No. 1-7 (Klehs), delivered to Senate Committee on Revenue and Taxation;
- (5) 7/14/00, Issue Paper No. 00-028, "Assessors' Contracts for Appraisal Work," including attached Appendix A of survey results.

Please feel free to contact me if you have any further questions or concerns regarding this matter.

Very truly yours,



Kristine Cazadd
Senior Tax Counsel

KEC:tr
prop/pragen/00/04/kec

cc: Honorable Dean Andal
Honorable Claude Parrish
Honorable Johan Klehs
Honorable John Chiang
Honorable Kathleen Connell
Mr. Timothy Boyer, MIC:83
Mr. Larry Augsuta, MIC:82
Mr. Dick Johnson, MIC:63

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JUN 28 2000

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File No: 45/10

June 26, 2000

VIA TELECOPIER & U.S. MAIL

The Honorable Kathleen Connell
Controller, State of California
300 Capitol Mall, Suite 1850
Sacramento, California 95814

Re: Proposed State Board of Equalization Rule 180; Termination of Rule-Making Procedures

Dear Controller Connell:

This office represents the San Ramon Valley Protection District (the "District"), a special district of the State of California located wholly within the County of Contra Costa ("County").

As District Counsel, this communication comments on a portion of State Board of Equalization ("SBE") Proposed Rule 180 (the "Proposed Rule"),¹ setting forth reasons why the Proposed Rule's consideration and continued processing by SBE staff in its present form should terminate until fundamentally reformed. The legally infirm portions of the Proposed Rule are those which result in the prohibition of use of consulting appraisers for appraisal of specialized properties such as oil and natural gas and mining properties. Proposed Rule, Section G, would prohibit a County Assessor who has hired a consulting appraiser for assessment of specialized property from using that consulting appraiser in a subsequent proceeding before an assessment appeals board to determine roll value of the involved specialized property.

Fire protection districts are single-source revenue local agencies, that is, solely dependent upon their proportionate share of property tax to perform their life- and

¹A petition to initiate rule-making for the Proposed Rule was presented to the Board on January 12, 2000, by the Construction Materials Association of California.

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property-saving services.² Accordingly, any reduction in roll value from the inability of the Assessor to present expert testimony consistent with that of the appraised value of specialized properties could negatively impact the determination of value as not all relevant opinion evidence would be presented to the involved assessment appeals board.

In providing these comments, we have also reviewed a March 17, 2000 communication to the Honorable Johan Klehs, Member, State Board of Equalization, submitted on behalf of the County by Mr. Dennis C. Graves, Senior Financial Counsel, a copy of which is enclosed. Statewide fire associations, the California Fire Chiefs Association and the Fire Districts Association of California have been made aware of the Proposed Rule as it could have applicability to assessment proceedings not only in counties where large oil refining complexes exist and consultants have been or would be retained on valuation issues, but would also be applicable to counties, and therefore fire protection agencies within those counties, where significant lumber processing facilities and/or agricultural processing facilities are located, such as Humboldt County and several counties within the San Joaquin and Sacramento Valleys.

Initially, the District notes that the proposed restriction on utilization by an Assessor's office, which does not regularly maintain an expert in a particular assessment area, such as those just noted, would effectively preclude an assessment appeals board, the trier-of-fact, from determining fair market value. Stated plainly, the Proposed Rule creates a fundamental unfairness in assessment appeals proceedings which would not be confined to either the oil refinery or to mining facilities. Practically, it would mean that the taxpayer has the right to retain a consultant for purposes of the determination of value, but that the involved county would not.

Such a rule would have a precedential effect on other administrative hearings and would lead to an absurd result concerning the presentation of expert opinion evidence. For example, does this mean that a fire agency would not have the ability to hire a consultant to support a fuel modification order when a property owner would have that right in a contested fuel modification administrative proceeding?

Further, the implication in the transmittal from the CMAC requesting rule-making is that somehow there is an incentive for a consultant to render a biased opinion or appraisal because it provides for additional compensation if that consultant's testimony or analysis is necessary in an appeal of the roll valuation determined by the involved assessor. The same argument could be advanced with respect to the whole condemnation process applicable to the acquisition of property for public purposes in the

²The District is governed by the provisions of the Fire Protection District Act of 1987 (Health & Safety Code § 13800, *et seq.*). Provision for basic fire services has been characterized as one of the most basic and essential functions of government. *Carmel Valley Fire Protection Dist. v. State of California*, 190 Cal.App.3d 521, 537 (1987) ("*Carmel Valley*").

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State of California (Code of Civil Procedure § 1230.010, *et seq.*) in that the valuation figure for the required offer for voluntary acquisition of the involved property, if based on a consulting appraiser's opinion of value, as most condemnation actions are, would be subject to bias.

The state and rule-making agencies such as the SBE should insure that all applicable information and opinions as to value are before the triers-of-fact for determinations of value of real property. To unduly restrict this ability strikes at a denial of procedural due process under the State Constitution.

Moreover, there is an additional processing defect which has occurred in the SBE staff processing methodology for the Proposed Rule in that it does not consider whether there would be a new program or higher level of service mandated on local government³ in that local governments which did not regularly employ a special consultant in the area of expertise of appraisal (e.g., oil refineries, lumber and agricultural processing facilities, mining operations) would be forced to retain at least two such consultants -- one for the actual appraisal of the involved real property, and another for the appraisal of the involved real property should an appeal be filed by the involved taxpayer.

In summary, unless the Proposed Rule is reformulated and its substantive content is modified to provide for a constitutionally fair hearing process, especially in an "as-applied" situation, it is legally infirm.

It is requested that the proposed rule-making proceedings be terminated and that a reformulation of the rule text be submitted, after adequate notice to all affected local agencies has been given and elimination of the restriction on use of consultants is affected.

This communication also requests pursuant to the California Public Records Act any opinion of SBE counsel on the Proposed Rule for which the attorney-client privilege has been waived, that is, they are maintained as a public document in the files of your office or of any member of the Board.⁴

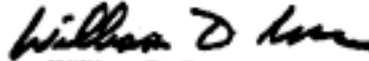
³See Cal. Const. Art XIII B, section 6; Government Code section 17500 *et seq.*; *Carmel Valley*, *supra*, 190 Cal.App.3d at 533.

⁴See, e.g., Comments of Board Member Klehs at March 6, 2000 Board meeting referencing a communication from Chief Board Counsel, Timothy W. Boyer, on which Board action was taken. Transcript of March 6, 2000 Board proceedings, p. 6, ll. 3-11, 16-19, 22-28; p. 7, ll. 1-4.

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Your review of the matters set forth in this communication is respectfully requested.

Very truly yours,



William D. Ross

WDR:no

cc: The Honorable Johan Klehs, Member, State Board of Equalization
The Honorable Roxanne Lindsay, President, Board of Directors,
San Ramon Valley Fire Protection District
Mr. Rick Probert, District Chief,
San Ramon Valley Fire Protection District
Fire Districts Association of California Fire Chiefs' Association
California Fire Chiefs' Association
Dennis C. Graves, Esq.